UNITED STATES PATENT AND TRADEMARK OFFICE

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09/514,033	02/25/2000	Donald L. Brodigan	020366-058900US	7568

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EXAMINER
SHANG, ANNAN Q

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte DONALD L. BRODIGAN and TOM T. THOMPSON

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Appeal 2009-007399
Application 09/514,033
Technology Center 2400

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Before CARLA M. KRIVAK, THOMAS S. HAHN, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges.*

BAUMEISTER, *Administrative Patent Judge.*

DECISION ON APPEAL

SUMMARY

Claims 1-11 stand rejected under 35 U.S.C. § 103(a) as obvious over

Pinder (US 5,742,677; issued Apr. 21, 1998) in view of Anderson

(US 6,219,042 B1; issued Apr. 17, 2001). Appellants appeal under

35 U.S.C. § 134(a) from the Examiner's rejection of these claims.

We reverse.

STATEMENT OF THE CASE

Appellants describe their invention as follows:

A method for providing interactive programming
over a broadband network. A service provider provides a
private data packet including the provider's address that
is inserted between frames of a transmission that is
broadcast over the broadband network. The interactive
video/data system may include a broadcast source, a
broadband digital terminal, and a set top box for a
consumer's television receiver. A data path may be
enabled by the set top box upon receipt of the private
data packet included with the video transmission. The
private data packet includes application interface
information communicated in real-time between the set
top box and broadcast source in addition to the
destination address.

(Abstract).

Independent claim 1 is illustrative:

1.   A method for providing personalized interactive
programming over a data path, the data path extending
between a service provider and a set top box, the service
provider being connected to a data network and having
an address, the method comprising:

establishing a communication path between a
broadband digital terminal and the set top box, the
broadband digital terminal being connected to the data
network and the service provider broadcasting video
through the broadband digital terminal to the set top box;

sending a private data packet in addition to the
broadcast video from the service provider, over the
network and through the broadband digital terminal to

the set top box, the packet containing application
interface information for the service provider and
containing the service provider address; and

establishing an impulse pay-per-view
communication path from the set top box through the
broadband digital terminal and over the network to the
service provider based upon the address to allow
interactive programming using the application interface
information between the service provider and the set top
box to personalize the broadcast programming.

The Examiner finds that Pinder discloses substantially every
limitation of independent claim 1, except that it "fails to explicitly teach
where the messages includes [sic: include] broadcast video, etc." (Ans. 4).
The Examiner further finds, though, that Anderson teaches this missing
claim limitation, and that motivation existed to combine these references'
teachings (*id.*).

Particularly, the Examiner finds that Pinder discloses the claim step of
sending over the network, from the service provider to the set top box, a
private data packet that contains application interface information for the
service provider (*id.*). The Examiner explains that this step reads on the
passage of Pinder that discloses "the service provider transmits messages
containing their address, logo and graphics data and the like" (Ans. 4; *see
also* Ans. 8).

Appellants alternatively contend "the shortcomings of Pinder are
greater than acknowledged by the Examiner" (App. Br. 4). More to the

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point, Pinder fails to disclose the claim step of sending a private data packet that contains a service provider's application interface information (App. Br. 4-5).

ANALYSIS

Appellants' contentions are persuasive. The passage of Pinder, upon which the Examiner relies, reads as follows: "Other information about the service provider may be transmitted in the clear (their address, logo and graphics data and the like), but this data is not required for providing or authorizing service to begin" (Pinder, col. 4, ll. 62-66). The Examiner has not provided any reasonable basis, though, to conclude that any of these disclosed types of information is synonymous with a service provider's application interface information. Nor has the Examiner alleged that, much less explained why, in light of this general disclosure, it would have been obvious to specifically transmit the claimed application interface information. As such, the Examiner has failed to demonstrate that it was known at the time of the invention to transmit a service provider's application interface information in the manner claimed.

For the foregoing reasons, Appellants have persuaded us of error in the Examiner's obviousness rejection of independent claim 1. Accordingly, we will not sustain the Examiner's rejection of that claim, or of claims 2-4, which depend from claim 1.

Independent claim 5 recites similar language: "a broadcast source at the destination address for transmitting a private data packet over a private virtual channel on the network, the packet containing application interface information and the destination address." For the same reasons, we will not sustain the Examiner's rejection of independent claim 5, or of claims 6-11, which ultimately depend from claim 5.

DECISION

The Examiner's decision rejecting claims 1-11 is reversed.

REVERSED

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